DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

RECEIVED

JUL 19 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR RELIEF FROM TWO TRUTH-IN-BILLING MANDATES PENDING CONCLUSION OF RECONSIDERATION PROCESS

Kathryn Marie Krause
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

Attorney for

U S WEST COMMUNICATIONS, INC.

Of Counsel,
Dan L. Poole

July 19, 1999

No. of Copies rec'd 0+4
List ABCDE

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

PETITION FOR RELIEF FROM TWO TRUTH-IN-BILLING MANDATES PENDING CONCLUSION OF RECONSIDERATION PROCESS

I. INTRODUCTION AND SUMMARY

U S WEST Communications, Inc. ("U S WEST") requests the Federal Communications Commission ("FCC" or "Commission"), or the Common Carrier Bureau ("Bureau") on delegated authority, to grant carriers immediate relief with respect to two aspects of the Commission's Truth-in-Billing Order,[1] pending the outcome of the reconsideration process. To the extent the Commission or the Bureau believe the need for relief is peculiar to U S WEST, we ask relief from the rules solely on our own behalf.

U S WEST seeks relief from two portions of the rules on which the record is extremely sparse. Moreover, compliance with these two rules will require the costly creation and deployment of new databases and systems currently not in existence. Specifically, relief is sought from those portions of the rules dealing with the identification of service providers not appearing on the previous month's bill[2] and --

[1] In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72, rel. May 11, 1999 ("Truth-in-Billing Order").

[2] 47 C.F.R. § 64.2001(a)(2)(ii) (see Appendix A of the Truth-in-Billing Order). As discussed more fully below relief from this requirement would not be necessary

if necessary -- the requirement that carriers mark charges as deniable or non-deniable.[3] While the Order can be read to require the marking of charges on bills associated with deniable/nondeniable services only coextensively with the Commission's jurisdiction under Section 201(b) of the Communications Act of 1934 (i.e., with respect to interstate or international services), U S WEST actually has LATAs that cross state boundaries (i.e., bubble LATAs) where we provide interstate toll traffic, as well as Extended Area Service ("EAS").[4] Thus, U S WEST provides "interstate" service and has a need for relief from the mandate even if it is limited in scope to interstate services.

Because we believe the Commission's Order/rules with respect to both the challenged items are very likely to be changed on reconsideration and/or appeal, we request relief pending the outcome of that process. While implementation of these

---

were it not for Staff statements that suggest that certain carrier "complying conduct" would not, in fact, result in rule compliance. See text associated with note 10, infra.

[3] 47 C.F.R. § 64.2001(c) (see Appendix A of the Truth-in-Billing Order). U S WEST is aware of the fact that the Commission eschews the use of the terms "deniable" and "nondeniable," citing to support from commenting parties, including state commissions. Truth-in-Billing Order ¶ 45. However, such are the terms utilized in the rule and are commonly-used jargon in the industry to describe a particular set of facts, so U S WEST uses the terms here.

[4] Bubble LATAs are LATAs that cross state boundaries. U S WEST has a number of them. We have addressed the matter of bubble LATAs and Commission jurisdiction and forbearance in filings before the Commission regarding Operator Services Providers ("OSP") and rate disclosures. See Petition for Clarification or Waiver or, in the Alternative, for Clarification and Reconsideration of U S WEST, Inc., CC Docket No. 92-77, filed Apr. 9, 1998 at 6 ("U S WEST OSP Petition"). And see Letter to Ms. Magalie Roman Salas, Federal Communications Commission from Kathryn Marie Krause, U S WEST, dated Apr. 30, 1998 attaching the aforementioned Petition.

two rules is not impossible given enough time and sound cost recovery, implementation absent the reflective and deliberative benefits of the reconsideration process will cause irreparable harm to U S WEST (and, we believe, other carriers as well), with no offsetting public interest benefits.

In order to comply with the rules as currently written, U S WEST would have to design, create and deploy databases to perform the functions the Commission mandates. The creation of such databases requires not just those adept at conceptual design but software developers and programmers. These resources are in acknowledged short supply as a general matter. But the culmination of the Year 2000 work efforts makes their availability even scarcer.

Moreover, previously-queued projects involving software/programming work associated with U S WEST's billing systems leaves no space or resource allocation for the work the Commission proposes to have done during this year. And, the Year 2000 moratoria or embargoes[5] means that in the best of cases the work would not be queued for completion until at least after the end of January 2000.

The relief U S WEST seeks can take a variety of forms: an extension of time or deferral of the effective date of the rules; a waiver or a stay of the effective date; or a temporary forbearance from enforcement of the rules. Whatever the precise relief granted it should extend <u>at least</u> through the time frame associated with the reconsideration process (if not a judicial appeal).

---

[5] U S WEST's specific plans are for the embargo on introducing new software and modifying existing systems to run from November 15, 1999 through January 31, 2000. The embargo will be extended, if necessary, to address problems that develop during that time frame.

As demonstrated below, and as will also be addressed in a Petition for Reconsideration that U S WEST will file on July 26th, support for the imposition of the challenged mandates is weak at best. Given the fact that reconsideration is likely (or a successful appeal based on lack of record/statutory support), it is appropriate to relieve carriers of the planning and implementation efforts necessary to comply with the rules.

II. THE COMMISSION'S REQUIREMENTS REGARDING BILL PRESENTATION CANNOT BE SUSTAINED IN TWO PARTICULARS. WITH RESPECT TO EACH, RELIEF SHOULD BE GRANTED SO THAT IMMEDIATE IMPLEMENTATION IS NOT REQUIRED

A. Service Provider Identification As Gleaned By Month-To-Month Comparison

The Commission adopted rule 64.2001(a)(2), requiring that telephone bills provide "notification to the customer that a new provider has begun providing service." A "new provider" is defined to include "any provider that did not bill for services on the previous billing statement."[6]

As Bell Atlantic has pointed out,[7] the rule uses the language of "notification," while the Truth-in-Billing Order speaks of a more ambiguous standard, i.e., one of "highlighting."[8] Even the use of the latter term, however, would not necessarily suggest that a carrier currently providing to customers a list of their serving carriers for that month (which U S WEST's bills currently do) needed to do more in

---

[6] 47 C.F.R. § 64.2001(a)(2)(ii) (see Appendix A of the Truth-in-Billing Order).

[7] See Letter from Marie Breslin, Director, Bell Atlantic to Mr. Glenn Reynolds, Acting Chief-Enforcement Division, Federal Communications Commission, dated June 29, 1999 at 1-2 ("Bell Atlantic June 29th Letter").

[8] Truth-in-Billing Order ¶ 35.

order to meet the rule requirements.[9] As the carrier list would change from month to month, the billing carrier would be "notifying" or "highlighting" that a "new provider has begun providing service."

It appears, however, based on conversations between Bell Atlantic and the Commission Staff, that the Staff has a different opinion regarding the compliance obligation. Those conversations suggest that something "more" or "different" from what is currently done on some carriers' bills is necessary to comply with the promulgated rules, at least with respect to the "highlighting" of non-presubscribed carriers or service providers.[10] But that "something" is not clearly articulated.

The reason for the lack of articulation could have to do with the fact that the Commission has made a fundamental error in its assumptions regarding highlighting "changes" in billing items. For some inexplicable reason, the Commission concluded that highlighting changes associated with service providers was less economically burdensome to carriers than providing information regarding changes in services.[11] The basis for this conclusion is not obvious from the record.

---

[9] Compare the Commission's Slamming Order in which it observed that "most of the telephone bills issued by U S WEST highlight changes that have occurred to a subscriber's account, including changes in preferred carrier selections." In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 1508, 1569 ¶ 101 (1998) ("Slamming Order").

[10] Bell Atlantic June 29th Letter at 1-2.

[11] Truth-in-Billing Order at ¶ 35 ("highlighting each new service provider, as opposed to each new service, will be considerably more economical to implement. . . . Given the more economical alternative of provider-based identification which

Indeed, the record evidence strongly points in just the opposite direction.

During the Commission/Carrier forum held during the summer of 1998, the Commission was advised that carriers -- such as U S WEST -- were incapable of doing "stare and compare" billing. That is, the billing systems were not set up to "look back" at what was billed the previous month (i.e., "stare") and then match that against what was being billed in the current month ("i.e., "compare"), in such a manner as to be able to point out the changes or the differences. In our filed Comments, U S WEST reiterated this limitation to our current billing system,[12] as did numerous other carrier commenting parties.[13]

---

effectively communicates changes in service to the consumer," the Commission chose to adopt the requirement).

[12] U S WEST Comments, CC Docket No. 98-170, filed Nov. 13, 1998 ("U S WEST Comments") at 5, 20.

[13] See, e.g., other commenting parties' filings in CC Docket No. 98-170, filed Nov. 13, 1998: Bell Atlantic Comments at Attachment, "Answers to Specific Questions," at 6 (addressing not only a requirement to highlight changes in services **but also changes in providers** (emphasis added)); Ameritech Comments at 11-12 ("New system databases and logic would need to be created to identify and flag . . . changes from one month's bill to the next, so they can be highlighted on the bill"; any such proposal "has vast and far reaching implications on Ameritech's systems" which "would entail extensive and expensive hardware and additional storage capacity and memory"; it would be "a massive undertaking that would be prohibitively expensive"); Commonwealth Telephone Comments at 3-4 (generally opposing a requirement to highlight changes); Project Mutual Telephone Cooperative Association Comments ("PMT") at 3-4 (a notification of changes requirement "would be expensive and burdensome for carriers to implement" and "would require the development of a new database to track such information. The cost of compiling and maintaining such a database would be expensive"); Qwest Comments at 5 (its billing system "does not currently have the capability of providing information to customers regarding changes in their account from one month to the next, and [it] would incur significant costs to incorporate such a requirement into [its] system."); Sprint Comments at 7-8 ("Sprint does not have the capability of meeting the Commission's suggestion that the carriers identify changes in **service providers** from one bill to the next. . . . The system

Contrary to the Commission's assumptions, it is **not** the volume of entries that makes "stare and compare" billing costly or difficult (i.e., the "data", as referenced by the Commission in note 98). Rather, it is the **absence of the backward-looking capability in the first instance**. As Bell Atlantic has reiterated, before any comparison could be made, that capability would have to be created, through some type of software capability and database creation.[14] And, as is not uncommon with the post-divested companies of AT&T, the various legacy billing systems generally means that any software/database "fix" must be adapted for more than one version/model of billing system.[15]

Commenting parties opposing any "stare and compare" billing obligation advised the Commission that any such requirement would involve substantial

---

requirements needed to accomplish this comparison will be extensive and extremely expensive;" and most likely would require the "development of a new database".); Rural Cellular Association Comments at 4; MCI Comments at 34-35; Personal Communications Industry Association Comments ("PCIA") at 9. See also Cable & Wireless USA, Inc. Comments at 6 (noting that typically billing development work is "undertaken for a new product line, where anticipated revenues from the new product can defer the development expense"). And see Kansas Corporation Commission Comments at 3 (noting that the Commission's proposal might be duplicative of the current "section summary regarding the current status of the consumer's bill").

[14] See Bell Atlantic June 29th Letter at 2. This would not be an uncomplicated process. The database might be created separate from that currently holding the entire range of billing data, i.e., the creation of a database that only included service providers (and billing aggregators) and allowed for a limited stare/compare capability or it might require the creation of a stare and compare functionality with respect to the existing billing databases at a "total bill" level.

[15] This is true not just for U S WEST that has three systems, but apparently for other carriers, such as Bell Atlantic, as well. Compare Bell Atlantic June 29th Letter at 2. And see Ameritech Comments at 12 (noting that it had five different versions of its billing "systems").

costs.[16] On the other hand, those supporting the requirement did not address costs at all, let alone quantify them.

Thus, it is impossible -- without countervailing cost evidence -- to determine how it was that the Commission decided that one type of stare and compare billing (i.e., that involving services) was more expensive than another (i.e., that involving service providers). To the extent that commenting parties addressed stare and compare billing only with respect to services, there is nothing in those filings to suggest the kind of cost reductions the Commission assumed with respect to service provider billing. Rather, the comments are simply silent on such billing. There is simply no record evidence at all to support the Commission's purported finding of fact regarding the economics of stare and compare billing and service provider identification.

Compounding the problem of the imposed mandate *sans* record support is the time frame associated with implementation and compliance. The posting of the Truth-in-Billing item in the Federal Register correlated the effective date of the rules with action to be taken by the Office of Operations, Management and Budget ("OMB"). The Federal Register item stated that, after consideration of the matter by the OMB, the Commission would issue a public notice with the rules' effective date, but that such date would not be any sooner than 30 days after the Federal Register publication.[17] The current communications between the Commission and

---

[16] See Ameritech Comments at 11; U S WEST Comments at 5; PMT Comments at 3; Qwest Comments at 5; Sprint Comments at 8.

[17] 64 Fed. Reg. 34488, dated June 25, 1999.

the OMB,[18] suggest that an effective date cannot probably be set before around September 4th. However, U S WEST (and we believe other carriers as well) could not comply with a Commission mandate so materially affecting our billing systems even in that allotted time.

Billing format changes are required to "get in queue" just like any other software project at U S WEST (in this case, the CRIS queue). As of today, that CRIS billing queue is totally filled up until the end of the year, taking into account the Year 2000 embargo that will go into effect in November. Thus, even if this type of change were a "market-driven" one (those being the best kind, of course),[19] U S WEST could not accomplish the software development and implementation until the first or second quarter of next year. And, any Commission requirement that it be done earlier would itself be arbitrary and capricious, given the competing "public interest" considerations associated with the Year 2000 initiatives.

B. Identification Of Services As "Deniable/Nondeniable"

To the extent the Commission's mandate in this area is circumscribed to interstate services only (the language of Section 201(b)'s grant of jurisdiction to the Commission), U S WEST can comply with the mandate in part -- with respect to the interstate communications services **of others**. That is, to the extent the Commission makes clear that the Truth-in-Billing obligations in its Order run

[18] See Petition by USTA for an Expedited Waiver or Stay, CC Docket No. 98-170, filed July 16, 1999 at n.3 (addressing the OMB/FCC communications).

[19] See Separate Statement of Commissioner Michael K. Powell arguing that you could find that current bills are truthful and not misleading at all as the result of carriers responding to market conditions. Truth-in-Billing Order at 74.

directly to service providers and not their billing agents,[20] U S WEST is able to accommodate the interexchange carriers ("IXC") that we bill for in their compliance obligation.[21]

However, U S WEST also provides interstate services (both toll and local) in a few bubble LATAs in our territory. Thus, a strict reading of the rules would apply the Commission's obligation to U S WEST in its local exchange carrier ("LEC") capacity.[22] In that capacity, we would have a difficult time complying with the rules, requiring substantial changes to our billing systems, at considerable cost, to comply.

Given the limited nature of U S WEST's interstate connection, we would ask for total relief from any requirements in this area. As we advised the Commission in another context, obligations that drive systems changes tend to get "carried over" into other jurisdictions and geographies due to the nature of systems and programming work.[23] For that reason, we ask for relief from the basic requirement in as it pertains to our bubble LATA services.

Should the Commission be of the opinion that its mandate regarding the marking of charges as deniable/nondeniable was meant to apply to all LECs, even those offering no interstate services, the requirement is patently unlawful and

---

[20] Truth-in-Billing Order ¶ 25.

[21] See note 25, infra.

[22] The situation U S WEST faces may not be duplicated by any other carrier. Thus, no other carrier may have the need for relief outlined in this portion of this request.

[23] See U S WEST OSP Petition at 6-7 discussing the problem of **only** providing rate disclosure in bubble LATAs.

exceeds the Commission's lawful authority under Section 201(b). For that reason alone the Commission should not impose the requirement prior to the conclusion of the reconsideration process.

Moreover, given that the implementation of this regulatory requirement would also involve the design and deployment of a database dedicated to compliance with the Commission's mandate, compliance with the requirement cannot possibly be accomplished before mid-year 2000. Similarly to the "service provider 'highlighting' obligation" addressed above, U S WEST would have to write software and create a database to accomplish this result. Only in this case the database would be substantially more complicated and costly to create.

1. The Commission's Jurisdiction to Support the Mandate Deserves Thoughtful Reconsideration

U S WEST is aware that certain state regulatory commissions asked the Commission to get involved in this issue. However, such entreaties cannot expand the nature of the Commission's jurisdiction over local services and the billing for those services by LECs.

In articulating the basis for the Commission's jurisdiction with respect to this requirement, the Commission cited to Section 201(b) of the Communications Act of 1934. That Act specifically limits the Commission's jurisdiction to interstate and international telecommunications services.[24] Thus, while the Commission clearly has some modicum of jurisdiction over IXCs with respect to how they craft

[24] See Truth-in-Billing Order ¶ 21 (quoting from 47 U.S.C. § 201(b)), ¶ 24.

their bills (whether they do the billing themselves or through a billing agent),[25] the same cannot be said with respect to LECs billing for their own local exchange or local enhanced/information services.

And, while the Commission cites to the recent Supreme Court Opinion for its assessment of very broad authority under the Telecommunications Act of 1996 ("1996 Act"),[26] it overstates that authority. That case specifically involved Section 251 of the 1996 Act and the scope of the express language of that provision. The Commission can cite to no provision of the 1996 Act granting it jurisdiction over LEC billing for its own intrastate services.

Certainly, Section 258 does not provide such statutory authority. That Section does not extend *carte blanche* authority over local exchange billings to the Commission.[27] As the Commission explicitly stated, that Section "authorizes the

---

[25] The Commission has correctly observed that in those cases where services are billed physically separately from any local exchange services statements about deniable/nondeniable are unnecessary. Truth-in-Billing Order ¶¶ 45-46. However, when IXC charges are combined with local exchange billings, the "covered carrier" (i.e., the IXC) is required to cause a differentiation to be made or face an assertion that its billing practices are unreasonable under Section 201(b). Id. ¶ 24. In LEC third-party billing situations, then, some kind of notification on the deniability issue will be required.

For the most part, at least for U S WEST, this notification will **not** pose a problem. Across U S WEST's territory, local service cannot be denied for non-payment of IXC toll. This information could fairly easily be disclosed to end users through the use of an IXC marketing message.

[26] Truth-in-Billing Order ¶ 21 and n.37, citing to AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999).

[27] It is not clear whether the Commission means to claim that Section 258 supports its mandate or not. The issue of deniability/nondeniability identifications on the bill is not discussed in the paragraph where the Commission "connects" its Section 258 authority with its mandates. See Truth-in-Billing Order ¶ 23.

Commission to adopt verification requirements to deter slamming in *both* the interstate and intrastate markets."[28] But how a charge is billed with respect to its deniability has nothing to do with the matter of carrier verification or slamming, a connection the Commission itself acknowledged as critical to any exercise of jurisdiction under Section 258.[29] Whatever the connection is between Section 258 and a requirement to highlight changes in service providers (the first issue discussed above), there is no connection between the subject of deniability of local service and slamming or carrier changes.[30]

2. Policy Considerations Caution Against Federal Insinuation in Bill Format Issues Surrounding Local Service Deniability

Moreover, for at least four reasons, as a policy matter it is inappropriate for the Commission to intervene in the matter of deniable/nondeniable identifications on LECs' bills. **First,** the "record evidence" on the matter of customer confusion around deniable/nondeniable is primarily anecdotal, presented through the voices of Attorney Generals and consumer advocates. These advocates should press their cases at the state level. This is clearly the case since their total "customer confusion" examples, if quantified as a percentage of the universe of all consumers in the United States, would constitute an infinitesimally small percentage. It is

---

[28] Id. ¶ 21 (emphasis in original).

[29] Id. ¶ 22 ("Section 258 . . . provides us with jurisdiction to regulate the billing practices of interstate, as well as intrastate, carriers to the extent that our regulations serve as a means of verifying carrier changes.").

[30] Indeed, the Commission's citation to yet another statutory provision, 47 U.S.C. § 228(c) (id. n.125), buttresses the argument that Congress knew how to grant the Commission this type of authority when it chose to do so.

inconceivable that a federal cost/benefit analysis would support the kind of massive billing system changes that the Commission's mandate portends.

Second, the Commission has for a long time deferred the fundamental issue of deniability/nondeniability to state commissions.[31] That is a correct result. While the Commission states that its regulatory mandates are "not meant to preempt states that have yet to adopt [a] distinction" between deniable and nondeniable charges,[32] it provides no principled analysis supporting its decision to preempt state prerogatives regarding billing format in those cases where such distinctions have been made.

Acting in line with the deference accorded them by the Commission, states have enacted rules not only on the basic question of deniable/nondeniable, but also on the matter of payment allocations, deposit applications, and disconnection practices -- all of which are integral aspects of the totality of the "deniable/non-deniable" issue. The states "occupy the field" of LEC billing for their own intrastate services. There is no room for federal insinuation in this area. Most saliently, to the extent states have seen fit to allow the issue of what is or is not deniable to be addressed at the potential disconnection stage (rather than the

[31] See Detariffing of Billing and Collection Services, Report and Order, 102 FCC 2d 1150, 1154-55 ¶ 8, 1176-77 ¶ 51 (1986). An exception was recently made by the Commission with respect to Lifeline services, where the Commission affirmatively prohibited the states from allowing denial of this service for non-payment of interstate toll charges. See Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 8983-88 ¶¶ 390-97 (1997); see also predecessor Recommended Decision of the Federal-State Joint Board, 12 FCC Rcd. 87, 286-87 ¶¶ 387-88 (1996).

[32] Truth-in-Billing Order ¶ 46.

billing stage), the Commission should continue to defer this entire issue to the states.

Third, the costs associated with creating the kind of database the Commission's proposal suggests will be quite substantial, draining available monetary and human resources from other projects.[33] The kind of database necessary to do the kind of state-specific bill formatting mandated by the Commission is a complicated and costly one.[34] It would require that all charges on the bill (including the number portability, universal service, TRS and PICC charges) be characterized as either deniable or nondeniable, because the failure to identify the charge as one would suggest it is the other. Charges that are often in the "nether world" of deniability (meaning that most carriers would not disconnect for non-payment of these charges alone, but the charges are sometimes added to the "amounts due" required to be paid to avoid a denial of local service) would have to be marked as one or the other.

The mere identification of the charges would take time and, undoubtedly, state commission involvement. But the matter of disconnection of service is more than just the identification of charges -- it involves the total amounts due and the classes of service. Some states, for example, will not permit a denial of residential

---

[33] More detailed information on these costs, and the tasks associated with creating such a database, will be presented in U S WEST's Petition for Reconsideration.

[34] It does not help that a carrier, such as U S WEST, only need get involved in this task if a state regulatory commission has ruled on the matter of "deniability" (see Truth-in-Billing Order), since most have -- if only at the most elementary level, i.e., "local services can be denied only for non-payment of services regulated by this Commission."

service for non-payment of business service (i.e., different classes of service) or require a minimum amount to be due and owing before disconnection takes place. Still others require payment plans with toll restriction be offered before disconnection occurs. Thus, as discussed more fully below, the bill formatting mandates proposed by the Commission might well result in untruthful information: the fact that a service was identified as "deniable" would not mean that -- in any given circumstance -- service would be denied for its non-payment.

Thus, a database for the kind of mandate issued by the Commission might not be sufficient if it only matched services by Universal Service Order Codes ("USOC") with a "deniability" status. Other indicia of "deniable/nondeniable" might have to be added in to get a "correct" reading of the deniability status of any particular charge on any particular account -- and we are talking in U S WEST's territory 12 million bills.

One can clearly see why those arguing for the greater "clarity" at the disconnection stage, rather than on the billing document, had it right.[35] After all, for the overwhelming majority of customers that simply review their bills for accuracy and pay them, whether their local service is deniable/nondeniable is not even a matter on which they need additional information. It is at the point of interruption or disconnection of service that the messages conveyed begin to -- and

[35] Reply Comments of U S WEST, CC Docket No. 98-170, filed Dec. 16, 1998 at 9-10 and nn.24 and 25, in support of commentors suggesting that the Commission refrain from even becoming a participant in whether the bill (as opposed to a disconnect notice) makes such a differentiation of the deniable/nondeniable charges on a carrier's bill.

need to -- get more specific, directed and personalized. It is there that information about what services are deniable/nondeniable is material to the recipient.

For these reasons, it is entirely inappropriate for a federal regulatory authorities to intervene in the area of bill presentation or formatting regarding local, intrastate services and their deniability or nondeniability for non-payment of other local or intrastate services (whether regulated or not). This is particularly true since compliance with such mandates can only be achieved through a significant cost and resource drain and since the Commission lacks any evidence that the information it wants conveyed is not being -- and cannot be -- conveyed in a different manner, at a different time, in a more relevant and effective manner than the overbroad marking mandate imposed by the Commission.

Fourth, as we have suggested above, the Commission's fairly facile proposal can quite easily result in untruthful and misleading speech, unless carriers "correct" for the Commission's error by speaking even further than mandated. For example, State A might well allow denial of local service for non-payment of other, regulated local calling services (such as Caller ID service, call waiting, etc.). Marking the bill as such might be misleading, however, if there is a state regulatory "additur" requirement that the denial not occur unless the arrearage of the account is above a certain limit and local carriers were not required to have built these kinds of contingencies into the database or to include additional textual narrative on the billing document.

Similarly, a state may generally prohibit a denial of residential local service for non-payment of business services, except in the case of a Home Office customer (where a business purchases what essentially is service at a residential rate). Advising customers in that state that local residential service cannot be denied for non-payment of business service might be confusing to those customers, being unaware of what class of service they actually have.

In the above cases, LECs would have to "explain further" the laws of deniability/nondeniability so that the information the Commission mandated be included on the bills is not misleading to the specific customers to whom the billings are directed. This is a horrible result. As a carrier that continuously tries to improve our bills to respond to customers' claims for simplicity and clarity,[36] we are opposed to being burdened by this type of requirement.

The Commission should reverse its position and leave, as it has in the past, the matter of local service denial and the billing of local service to the states. For those states that profess to the Commission that something more should be done, they should begin the process of doing it, leaving unencumbered the authority of other states to remain free of federal intervention in this area.

[36] For example, our current bills -- in simple terms -- advise customers that "basic services" "are necessary for you to use your telephone," while "optional services" are described as "provided at [the customer's] request and are not required as part of [the customer's] basic telephone service." Clearly, for most paying, on-time, not confused customers, this language makes pretty clear what is going on.

III. THE REQUESTED RELIEF CAN BE SUPPORTED BY A VARIETY OF PROCEDURAL VEHICLES, RANGING FROM A WAIVER FOR AN EXTENSION OF TIME TO A STAY TO THE GRANT OF TEMPORARY FORBEARANCE

A. An Extension Of Time Or Deferral, Coincident With The Reconsideration Process, Is Appropriate

The Bureau can, on delegated authority, grant an extension of time of the effective date of a rule, and it has done so when such has been in the "public interest." For example, the Bureau postponed the effective date of new rules requiring independent LECs to provide interexchange services through a separate affiliate.[37] In that case the Bureau did not address the process associated with the granting of the relief as one involving a "stay" or the correspondent Virginia Petroleum Jobbers standard.[38] Rather, it based its action solely on the finding that deferring the compliance deadline was "in the public interest."[39]

As the facts and arguments in this filing make clear, the case for a deferral of the effective date (or enforcement of the) two challenged rules is strong, under either the public interest standard or the more traditional Virginia Petroleum

---

[37] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Order, 13 FCC Rcd. 6427 (1998) (Chief, CCB) ("IXC Separate Affiliate Order").

[38] See Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958). Under that test, a petitioner must demonstrate that: (1) it likely will succeed on the merits on review; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors grant of a stay. For further discussion of this standard, see discussion below under Section B.

[39] IXC Separate Affiliate Order, 13 FCC Rcd. at 6428 ¶ 3.

Jobbers standard. The Bureau should grant a waiver or an extension of time until the conclusion of the reconsideration process.

B. A Stay Of The Effective Date Of The Commission's Rules During The Reconsideration Process Is Appropriate

The Commission has authority to specify an effective date for new rules and to change that date at a later time. While the Administrative Procedure Act ("APA") states that the effective date for substantive rules may generally be no sooner than 30 days after the rules are published in the Federal Register,[40] neither that statute nor the Communications Act restricts the Commission from setting a later date, or from postponing the original effective date. Indeed, Section 1.103 of the Rules expressly provides for designating a later effective date in response to a request from any party.[41]

Generally, the Commission will stay the effective date of its rules or orders upon a showing of "good cause."[42] There are various tests that have been enunciated for meeting that standard. However, it is fair to say that the standard is somewhat flexible, especially under Section 1.103.[43] And it is true that the Commission will stay the effective date of an order if it is persuaded that serious

[40] 47 U.S.C. § 553(d).

[41] "[T]he Commission, on its own motion or on motion by any party, may designate an effective date that is either earlier or later [in time] than the date of public notice [of such action]." (footnote omitted.) The Commission adopted section 1.103 to make clear it has "broad discretion to designate the effective dates of its actions." (Citation omitted.) Addition of New Section 1.103 to the Commission's Rules of Practice and Procedure, 49 RR (P&F) 2d 225, 226 (1981).

[42] See 47 C.F.R. § 1.429(k).

[43] See 47 C.F.R. § 1.103(a).

issues are present that warrant resolution prior to enforcement of the rule, without necessarily applying the Virginia Petroleum Jobbers factors. As is clear from the above arguments, such issues are presented here.

Even where the Commission has granted an indefinite stay of new rules, it has frequently not required that the Virginia Petroleum Jobbers test be met.[44] Instead, it has decided that given concerns raised as to whether the imminent effective date served the public interest, further development of the record would ensure that the concerns were considered.

In the not-too-distant past, for example, the Commission acknowledged that it could grant a stay of its rules where it determined that application of the rule could be disruptive to consumers and where the regulatory evidentiary record was scanty with respect to the matters raised on reconsideration. Thus, the Commission has granted a stay where, "after adoption of the rule, the Commission concluded that its implementation may lead to unanticipated and unintended consequences."[45] And, this was not the only time in recent history where the Commission changed

---

[44] For example, in addition to the more recent cases discussed below, the Commission has granted stays of effective dates of orders in the following cases without addressing the four-part injunctive relief test enunciated in Virginia Jobbers: Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, 8 FCC Rcd. 8135 (1993) (rules stayed "in order to permit [certain rule requirements] to be considered more fully on reconsideration"); Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems, 2 FCC Rcd. 603 (1986) (effective date of must carry rules stayed to address cable system concerns).

[45] See Policies and Rules Concerning the Interstate, Interexchange Marketplace, Order, 12 FCC Rcd. 15739, 15742 ¶ 7 (1997) (citations omitted).

the original effective date of one of its rules at the urging of a moving or petitioning party.

In fact, just a few years prior to that Order, the Commission articulated three such consequences that would be remedied through the grant of a stay.[46] First, the Commission determined that it would grant a stay to avoid premature compliance with a questionable rule.[47] Second, the Commission has concluded that its rules should be stayed where doing so would "allow the Commission to develop a complete record . . . and make a more informed decision."[48] And, third, the Commission has concluded that it would grant a stay in order to avoid industry and consumer confusion.[49]

More recently, the Commission recently granted an extension of time with respect to certain Customer Proprietary Network Information ("CPNI") rules where the Commission concluded "that it serve[d] the public interest to extend the deadline by which [it would] begin to enforce [its] rules . . . so that [it could] consider recent proposals to tailor [its] requirements more narrowly and to reduce

---

[46] See Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 11 FCC Rcd. 856 (1995) ("Stay Order"). And see Policy and Rules Regarding Calling Number Identification Service -- Caller ID, 10 FCC Rcd. 13796 (1995) (extending deadline by seven months); Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, 11 FCC Rcd. 17512 (extending deadline by ten months).

[47] Stay Order, 11 FCC Rcd. at 857 ¶ 2 ("We believe the public interest would best be served by ruling on the issues raised in the pending petitions for reconsideration before requiring affected parties to take actions to comply.")

[48] Id. (rule stayed "to develop a complete record upon which we can conduct a meaningful cost-benefit analysis and make a more informed decision").

[49] Id.

burdens on the industry . . . By delaying the date of enforcement until after the Commission acts on reconsideration petitions, parties will have the opportunity to comment on [commentors] proposed alternatives or make proposals of their own."[50] Because the implementation of the rules was going to "take time and effort," the Commission believed that "the postponement of compliance until the Commission provides additional guidance may promote more efficient and effective deployment of resources spent on meeting" the other CPNI rules.[51]

All of this "stay pending reconsideration" regulatory jurisprudence supports deferring the effective date of the currently-proposed rules until the conclusion of the reconsideration process. The record support for both rules is weak. Most likely there will be a change of position on reconsideration (that is, opponents of the rules are likely to succeed on the merits). Implementation will take considerable time, resources and effort. And, customers will encounter a change in their *status quo* that might change again at the conclusion of the reconsideration process. For all these reasons, a stay should be granted pending reconsideration.

C. Temporary Forbearance Would Also Be Appropriate

Section 10 of the 1996 Act requires the Commission to forbear from applying any provision of the Act if the agency determines that: (1) enforcement is not necessary to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory; (2) enforcement is not necessary to protect consumers;

[50] In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Order, 13 FCC Rcd. 19390 ¶ 4 (1998).

and (3) forbearance is in the public interest. While the Commission might deem the two items addressed in this Petition beneficial to the consumer from a theoretical perspective, they certainly are not critical linchpins in the Commission's Truth-in-Billing agenda. And, the past absence of the two functionalities in the bills of the LEC without any proven consumer harm correlated to that absence strongly suggests that they are not causally necessary to protect consumers from slamming or cramming.

In assessing whether forbearance is in the public interest, Section 10 requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. Because the absence of the two functionalities has not affected competitive entry in any material way, and the imposition of the obligations will consume resources otherwise better devoted to other more pro-competitive and pro-consumer initiatives, forbearance would meet this test.

There is no limitation found in Section 10 that suggests the vehicle can only be used in a "permanent" capacity. That is, the logic of forbearance is as compelling with respect to a temporary as a permanent forbearance.[52]

IV. CONCLUSION

Based on a variety of theories for relief, the Commission should grant carriers a deferral or extension of the effective date of rules 47 C.F.R. Sections

---

[51] Id.

64.2001(a)(ii) and (c) pending the reconsideration process. Both law and equity support such relief. And, neither other carriers nor consumers will be harmed by such a deferral since neither of these rules are the linchpins in the Commission's Truth-in-Billing agenda.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By: Kathryn Marie Krause

Kathryn Marie Krause (RW)
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

Its Attorney

Of Counsel,
Dan L. Poole

July 19, 1999

[52] In this case, the forbearance actually operates as a form of stay or deferral.

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 19th day of July, 1999, I have caused a copy of the foregoing **PETITION FOR RELIEF FROM TWO TRUTH-IN-BILLING MANDATES PENDING CONCLUSION OF RECONSIDERATION PROCESS** to be served, via hand-delivery, upon the persons listed on the attached service list.

Rebecca Ward

Rebecca Ward

William E. Kennard
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Gloria Tristani
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Michael K. Powell
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Harold Furchtgott-Roth
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Susan P. Ness
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

Lawrence E. Strickling
Federal Communications Commission
Room 5C-345
Portals II
445 12th Street, S.W.
Washington, DC 20554

Glenn Reynolds
Federal Communications Commission
Room 5A-847
Portals II
445 12th Street, S.W.
Washington, DC 20554

David A. Konuch
Federal Communications Commission
Room 5C-848
Portals II
445 12th Street, S.W.
Washington, DC 20554

International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

CC98-170c.doc
Last Update: 7/19/99